

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAMIAN KASSAB et al.,
Plaintiffs,

v.

DANIEL ARAF HOP et al.,
Defendants.

Case No. 22-cv-12454
Honorable Shalina D. Kumar
Magistrate Judge David R. Grand

**OPINION AND ORDER VACATING ECF NO. 32 AND REQUIRING
SUPPLEMENTAL BRIEFING FROM THE PARTIES PURSUANT TO
THE COURT OF APPEALS' JUNE 5, 2024 ORDER (ECF NO. 37)**

The Court granted defendants' motion to dismiss for forum non conveniens (ECF No. 14) in an August 31, 2023 opinion and order. ECF No. 32. In its decision, the Court applied federal common law to hold that a forum selection clause was enforceable against nonsignatory plaintiff Arturo Davila and could be invoked by nonsignatory defendants Daniel Araf Hop and Armar Capital USA, LLC. ECF No. 32, PageID.293-95. Plaintiffs appealed the Court's decision. ECF No. 35.

The Court of Appeals issued a June 5, 2024 order, vacating this Court's opinion and order granting defendants' motion to dismiss. The Court of Appeals remanded the case "for reconsideration in light of *Firexo [Inc. v. Firexo Group Ltd.]*, 99 F.4th 304 (6th Cir. 2024)." ECF No. 37.

Under *Firexo*, whether a forum selection clause is applicable to nonsignatories must be decided based on state law—not federal common law—using traditional choice-of-law principles. 99 F.4th at 326-29; see generally *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).

In accordance with the Court of Appeals’ order, **IT IS ORDERED** that the Court’s August 31, 2023 opinion and order (ECF No. 32) is vacated. **IT IS FURTHER ORDERED** that, within thirty (30) days of the date of this order, defendants submit supplemental briefing in support of its motion to dismiss (ECF No. 14) on “whether Michigan law permits application of a forum-selection clause against [or by] a nonsignatory,” and if necessary, whether this unsettled question of Michigan law should be certified to the Michigan Supreme Court. ECF No. 37; and that plaintiffs submit a response brief within fourteen (14) days thereafter.

Dated: August 21, 2024

s/ Shalina D. Kumar
SHALINA D. KUMAR
United States District Judge